

**REMARKS**

Upon entry of this paper, claims 1, 30, 35, 41, 42, 44, and 45 have been amended, claim 5 was previously canceled, and claims 47-53 have been added as new claims. Thus, claims 1-4 and 6-53 are presently pending in this application. No new matter has been added.

**Interview Summary**

Applicant thanks the Examiner for conducting a brief telephone interview on March 23<sup>rd</sup> in which the present claims, and the claims filed February 2<sup>nd</sup>, were discussed. The Examiner indicated that despite the fact that the amendments as provided in the previous After Final Amendment filed February 2<sup>nd</sup> were requested by the Examiner and agreed to be patentable over the prior art, the Examiner's Supervisor has not agreed to allow the claims based on some informalities with the claim language. Specifically, the Examiner's Supervisor requires that the word "and/or" be removed from the claim, as well as the phrase "capable of". The Examiner indicated that the claims would be allowable over the art, but for these informalities.

Accordingly, Applicant has rewritten the independent claims to remove the word "and/or" and the phrase "capable of" in the presently presented claims. The removal of these phrases required that the claim elements surrounding of these phrases be re-worded and partially moved to newly provided dependent claims 47-53. However, the amendments made herein do not substantially change the intended meaning of the claims as previously searched by the Examiner. Therefore, Applicant considers these amendments to maintain the application in condition for allowance over the art, as previously indicated by the Examiner.

**Claim Rejections – 35 USC § 112**

Claims 1, 30, 35, 41, 42, and 44 were rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims were asserted contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention.

Specifically, the use of the term “SDH/SONET” was indicated to not have support in the specification. Subsequent telephone interviews with the Examiner have clarified that SDH/SONET relates to a standard (not implemented in Ethernet prior to this invention) as described throughout the specification, and that details concerning the types of functionality under SDH/SONET are both detailed in the specification (such as at page 2, last paragraph) and are known to those of ordinary skill in the art. Accordingly, Applicant believes that this issue has been addressed by the telephone interviews and by the specification itself. Reconsideration and withdrawal of this rejection is requested.

The Advisory Action further indicated that the word “and/or” was indefinite. Applicant would like to point out that no justification or support has been provided for the interpretation that the word “and/or” is indefinite. As defined in Webster’s Collegiate Dictionary, 10<sup>th</sup> Edition, the word “and/or” is, “used as a function word to indicate that two words or expressions are to be taken together or individually”. During the telephone interview of March 23<sup>rd</sup>, Applicant offered to amend the claims to read “linear topology and/or ring topology and/or mesh topology” to more precisely follow the definition of the word “and/or” and its common usage. In a conclusory statement, the Supervising Examiner maintained the position that the word “and/or” is indefinite, without providing any support for this position. Applicant has thus been forced to remove the word “and/or” from the claim and alter the wording of the claim to capture the present invention. Accordingly, the claims as presented herein are deemed to be in condition for allowance.

#### **Claim Rejections – 35 USC § 102**

Claims 41, 42, and 44 were rejected under 35 U.S.C. 102(e) as being anticipated by Yip. Upon entry of this Amendment, claims 41, 42, and 44 have been amended to restate the functionality attributed to the “SDH/SONET” terminology as requested by the Examiner. Accordingly, Applicant believes all claims to be patentable over Yip, however, further remarks are provided below.

Specifically, Yip is generally directed to a method to support proprietary protection functionality only in a ring topology network and, based on an inventor's right to be his/her own lexicographer, labeled it as "APS". However, Yip's propriety APS only has a basic ability to recover from a complete failure or fault only in a proprietary ring architecture. It does not have the ability to operate outside of its proprietary network. Even from a strict high level functionality perspective, disregarding the actual device of Yip and its proprietary nature, the broadest interpretation of the functionality provided in Yip can be deemed to suggest only a mere subset of the functionality that is required in accordance with SDH/SONET APS. As such, Yip by no means discloses the function or ability to provide protection switching for multiple network topologies. Some of the example topologies include linear topology switching/bridging/selecting and/or ring topology protection switching/bridging/selecting and/or mesh topology protection switching/bridging/selecting (*see* amended claims 1, 30, 35, 41, 42, and 44, and new dependent claims 47-53). The device described in Yip cannot support SDH/SONET APS functionality by definition, because of its proprietary nature. In accordance with the invention of the pending claims, Applicant has defined a system and method of supporting SDH/SONET APS functionality in multiple different network topologies, with the ability to perform SDH/SONET APS switching, bridging, and selecting for automatic protection switching functionality in an Ethernet environment. Yip fails to anticipate the claimed system and method.

Furthermore, Yip does not and cannot support standard SDH/SONET APS protection bridging because the SHD/SONET standard and functionality requires the transmission of traffic on both the working and protection channels (*see* amended claims 1, 30, 35, 41, 42, and 44), which Yip cannot do (*see also* Specification, page 8, last paragraph). The method described in Yip of blocking and unblocking secondary ports is not the same as the SDH/SONET APS selector/switch (which is different from an Ethernet Switch) because the standard and functionality described requires that the selection be between selecting the better of the two received signals on both the working and the protect channels. Because Yip does not and cannot transmit traffic in accordance with SDH/SONET APS, Yip does not and cannot support standard SDH/SONET APS selector.

Reconsideration and withdrawal of this rejection is respectfully requested.

**Claim Rejections – 35 USC § 103**

Claims 1-4, 6-9, 15-19, 23, 26-28, 30, and 35 were rejected under 35 U.S.C. 103(a) as being unpatentable over Yip in view of Laber. Claims 10, 11, 34, and 39 were rejected under 35 U.S.C. 103(a) as being unpatentable over Yip in view of Laber in further view of Lu. Claims 12, 14, 29, 33, and 38 were rejected under 35 U.S.C. 103(a) as being unpatentable over Yip in view of Laber in further view of Sefidvash. Claims 13, 21, 32, and 37 were rejected under 35 U.S.C. 103(a) as being unpatentable over Yip in view of Laber in further view of Shi. Claim 22 was rejected under 35 U.S.C. 103(a) as being unpatentable over Yip in view of Laber in further view of Abbott. Claims 20, 31, and 36 were rejected under 35 U.S.C. 103(a) as being unpatentable over Yip in view of Laber in further view of Lurndal. Claim 24 was rejected under 35 U.S.C. 103(a) as being unpatentable over Yip in view of Laber in further view of Taketomi. Claim 25 was rejected under 35 U.S.C. 103(a) as being unpatentable over Yip in view of Laber in further view of Burnett. Claims 40, 43, and 46 were rejected under 35 U.S.C. 103(a) as being unpatentable over Yip in view of the admitted prior art. Claim 45 was rejected under 35 U.S.C. 103(a) as being unpatentable over Yip in view of Abbot. Upon entry of this Amendment, all independent claims have been amended to further clarify the functionality provided under the SDH/SONET terminology. Therefore, Applicant believes the pending claims to be allowable over the cited references. However, Applicant provides additional clarifying remarks below.

Applicant respectfully submits that unless a *prima facie* case of unpatentability with respect to known facts is established, applicant is not obliged to proffer any evidence of nonobviousness. To establish a *prima facie* case there must be some suggestion or motivation, either in the prior art or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine multiple reference teachings. There must then be a reasonable expectation of success. Finally, the prior art reference or references (when combined) must teach or suggest all the claimed limitations.

All of the above combinations rely upon Yip, however, none of the references combined with Yip corrects the failure of Yip to disclose, teach, or suggest an APS system that can handle multiple network topologies, including linear, ring, and mesh topologies, and do so providing the

functionality of SDH/SONET APS in an Ethernet environment. Additionally, none of the references, alone or in combination, teaches or suggests a transmission of traffic on both the working and protect channels (*see* amended claims 1, 30, 35, 41, 42, and 44) in an Ethernet environment, as provided in the present claimed invention and in accordance with SDH/SONET APS functionality. Accordingly, neither Yip, nor the combination of Yip with any of the above references results in a disclosure, teaching, or suggestion of all elements of the pending claims after entry of this Amendment. As such, Applicant respectfully requests reconsideration and withdrawal of these rejections.

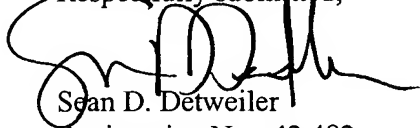
**CONCLUSION**

In view of the amendments and remarks set forth above, Applicant contends each of the presently pending claims in this application is in immediate condition for allowance.

Accordingly, Applicant respectfully requests the Examiner pass the claims to allowance. If the Examiner deems there are any remaining issues, we invite the Examiner to call the Applicant's Attorney at the telephone number identified below.

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Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Sean D. Detweiler', is written over the typed name.

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